

The Hall, 2nd Floor, Memorial Hall Library, Elm Square, Andover

Present: Anderson, McDonough, Bevacqua, Jeton, Brown, Batchelder, Ranalli.

The meeting opened at 7:00 p.m. Anderson asked for a motion to adjourn to Executive Session. McDonough made a motion to adjourn to Executive Session. Ranalli seconded the motion & the Board voted: Ranalli, McDonough, Bevacqua, Jeton and Brown to adjourn to Executive Session. At 7:17 p.m. the Board reconvened the regular meeting.

PETITION NO. 3764

PETITIONER: Vives

PREMISES AFFECTED: 18 Alden Rd.

MEMBERS: Anderson, McDonough, Jeton, Ranalli, Bevacqua, Brown, Batchelder

Bob Diaz, builder, represented the petitioners' request to construct a 2nd story addition that will not meet the minimum setback requirement. There will be no increase in the footprint of the existing house, which is located in SRB District. Diaz submitted elevation drawings to the Board. At the time the house was built, 1950, the minimum rear setback was 30'. Bevacqua noted that the minimum lot area was 8500 sq. ft. Mr. Vives informed the Board that it is the smallest house on the street. The Board waived a site view. McDonough made a motion to close the hearing. Bevacqua seconded the motion & the Board voted unanimously to close the hearing. Brown sat off. Bevacqua made a motion to grant a special permit. Anderson seconded the motion & the Board voted (5-0) to grant a special permit for the 2nd story addition. Jeton will write the decision.

PETITION NO. 3763

PETITIONER: Zhao/Chen

PREMISES AFFECTED: 5 Arrowood Lane

MEMBERS: Anderson, McDonough, Jeton, Ranalli, Bevacqua, Brown

Attorney Daniel A. Hayes, Jr. represented the petitioners' request to demolish the existing single family dwelling to construct a new house that will meet all setback requirements. Also present was Builder Paul Paulyk as well as the petitioners. The only non-conformities that would remain are the undersized lot and insufficient frontage. Hayes argued that they meet the exception under Section 3.3.3 & that the new house would not be detrimental to the neighborhood. This lot is part of a 1964 subdivision, but is one of only two single-story homes in the neighborhood. Anderson questioned whether a special permit is necessary if the only non-conformities would be lot area and frontage. Hayes explained that the existing house has 4400 sq. ft. area, while the new would have 7915 sq. ft. +/-, but excluding the basement it would be 5400 sq. ft. It would be two to two and a half the size of the existing house. Attorney Jason Panos, representative for 3 Arrowood Ln., submitted a brief to the Board in opposition. Panos argued that the proposed intensifies the non-conformities and is not in keeping with the character of the neighborhood. Anderson questioned how the size of a house

is detrimental, adding that they can regulate size by special permit. Several neighbors voiced concern over the size of the proposed house. Paulyk explained that the house is two-levels with walk-out basement due to the slope of land from front to back of the lot, similar to other houses on the street. He stated the house is 34.5' high. Brown scaled it at 36'. Paulyk noted that the scale is wrong on the plan. Brown argued that the proposed house exceeds the height limit (35') Bevacqua asked if it is a walk-up attic, suggesting that it could be living space. Paulyk confirmed that the attic is walk-up. The Board will view the premises on Saturday, 2/9/08. Jeton is off the case. Brown asked how this undersized lot was created as part of the subdivision. Bevacqua asked if it predates the cluster by law. Anderson asked Inspector of Buildings when the cluster by law came into effect. Kaija Gilmore, Inspector of Buildings, stated that she was unsure and would check with the Planning Division. Bevacqua made a motion to continue the hearing to Saturday, 2/9/08 to view at 8 a.m.

PETITION NO. 3758

PETITIONER: Homes of Care II

PREMISES AFFECTED: 126 Lovejoy Rd.

MEMBERS: Anderson, McDonough, Jeton, Ranalli, Bevacqua, Brown

John Paulson, of Atlantic Engineering, presented the request for a variance &/or special permit to construct an addition to the rear that will not meet the rear setback. The house currently has 3 bedrooms, the owner of 1 year now, wishes to renovate it and increase accessibility. The lot is non-conforming as to area and frontage. The proposed rear setback would be 23.7'; the existing rear setback is 37.1'. Ranalli asked if there is an alternate location for a conforming addition. Paulson explained that with accessibility, they need the depth, so adding to the side with a 25' side setback would make the living space narrower. Brown pointed out that it is a 15' side setback. Paulson answered that it still narrows it down. The Board asked about the current use as a group home, the number of residents and staffs. Kaija Gilmore, Inspector of Building, reminded the Board that the State does not regulate the type of use of the home, because it is classified as a single family dwelling and therefore the setback variance is the only issue. The use aspect should not be discussed. Several residents voiced opposition to the addition citing noise, corporate ownership & use of the property. Jeton asked the Inspector the difference between a group home and a congregate care facility. Inspector Gilmore reiterated that the State Building Code classifies it as a single family dwelling. The Board waived a view of the property. Bevacqua sat off the case. The Board voted (5-0) to close the hearing. The Board then deliberated. Jeton suggested it could be done as a special permit as an extension of a pre-existing non-conformity. Anderson pointed out that the dimensions are conforming. McDonough added that it would create a non-conformity. Brown suggested it would be a variance. Ranalli argued that there is no technical reason for a variance. The Board agreed. McDonough made a motion to deny the application. Jeton suggested denying without prejudice. Anderson agreed. The Board denied Board application, without prejudice, by a vote of (5-0). Ranalli will write the decision.

PETITION NO. 3761

PETITIONER: Blatman

PREMISES AFFECTED: 4 Norwich Place

MEMBERS: Anderson, McDonough, Jeton, Ranalli, Bevacqua, Brown

Attorney Mark Johnson represented Mr. Blatman, who was also present. Johnson submitted a summary to the Board. Blatman wishes to construct an in-ground swimming pool that will not meet the side setback. However, Johnson referred to section 4.2.4 that states, in part, recreational structures shall not be closer than 10' to any property line of the rear yard. He feels that the pool would conform to a 10' setback from the side lot line. Johnson noted that the lot is irregularly shaped; Anderson commented that if the side setback for the zoning district does apply, the hardship would be lot shape. Johnson added that wetlands would constitute part of the hardship as well. They have not filed with Conservation Commission at this time. Anderson asked if they could meet the 30' side setback. Mr. Blatman explained that the engineer, Bill McLeod, discussed this with Conservation & was told that they'd have to move & shrink the pool to fit. Johnson informed the Board that the wetlands expanded once delineated. Johnson submitted letters in support of the pool. Lisa Olsheskie, neighbor, spoke in favor of the pool commenting that the entire neighborhood has wetland issues. Jeton asked Kaija Gilmore, Inspector of Buildings, to explain why it is not a rear yard. Gilmore stated that the by law predetermines the side & rear setback and that it is immaterial what the rear/side yard is, but the pool must meet the side setback. The Board discussed whether the pool is subject to the side or rear setback. Johnson emphasized section 4.2.4 "... can't be any closer to *any* property line of the rear yard..." adding that there is more than one rear lot line. Gilmore disagreed. The Board waived a site view. Jeton made a motion to close the public hearing. Bevacqua seconded the motion & the Board voted (6-0) to close the hearing. Anderson suggested assuming the side yard setback applies, then the irregular shape of the lot and wetlands would constitute a hardship. Jeton made a motion to approve the variance. Ranalli seconded the motion. Bevacqua stated that even if there is a hardship, is it substantial. He argued that not having a pool is not a hardship, short of a medical reason. The Board discussed the neighborhood support and the Inspector's consistent interpretation. Ranalli asked to which lot line the 10' setback applies. Anderson asked for a vote to approve a variance. The Board voted (Ranalli off) 3-2, McDonough & Bevacqua opposed. Anderson asked for a vote to overturn the Inspector of Buildings. Bevacqua made a motion to overturn the Inspector's decision denying a building permit to construct the pool because the by law allows a 10' setback in the rear yard. Brown seconded the motion, adding that it's difficult to define the yard area with a house on an irregularly shaped lot. Anderson commented that if the lot was square & the pool was in the rear yard, is it a side or rear yard lot line. Bevacqua stated it is moot because it says 'any' lot line. Jeton argued that section 4.2.4 also says "...it complies with the side yard setback." McDonough made a motion to overturn the Building Inspector's decision to deny the building permit. The Board voted 3-2 to overturn the Building Inspector, McDonough & Jeton opposed. Bevacqua will write the decision.

PETITION NO. 3760

PETITIONER: Ristuccia

PREMISES AFFECTED: 120 Salem St

MEMBERS: Anderson, McDonough, Jeton, Ranalli, Bevacqua, Brown

Attorney Mark Johnson represented Michael Ristuccia, petitioner, in his request to build a new single family dwelling on the lot while the existing house remains until it is moved. Relief is requested from Section 10 definition of a dwelling unit, since the existing house, once moved to the corner of the lot, will not have utilities, will not be occupied or habitable, and thus will not be a dwelling unit. The new house will meet all dimensional requirements. The only nonconformity is lot area. The existing house has been moved at least once in the past. Ristuccia proposes to move it to a lot where preservation restrictions will be placed on it. At this time, it is uncertain where the existing house will be moved to. McDonough made a motion to close the public hearing. Bevacqua seconded the motion & the Board voted unanimously to close the hearing. McDonough asked if it would be a special permit or a variance. Brown commented that it would be a special permit under section 3.3.7 for the demolition & reconstruction. The Board noted the removal after demolition, rather than the demolition of the existing house is the current case. Brown made a motion to grant a special permit under 3.3.7 with the condition that the existing structure be removed from the premises prior to a certificate of occupancy is issued for the new house. McDonough seconded the motion. Anderson sat off the case. The Board voted (5-0) to grant a special permit with condition that the existing house be removed prior to issuance of a certificate of occupancy for the new house. McDonough will write the decision.

PETITION NO. 3744

PETITIONER: Andover Public Schools

PREMISES AFFECTED: 80 Shawsheen Road

MEMBERS: Anderson, Bevacqua, Jeton, Ranalli, Batchelder, Brown

No one appeared at the continued public hearing. The Board voted unanimously to continue the hearing to the March 6, 2008 meeting.

PETITION NO. 3762

PETITIONER: Andover Village Associates

PREMISES AFFECTED: 429-431 South Main St

MEMBERS: Anderson, Bevacqua, Jeton, Ranalli, Batchelder, Brown

Bill Perkins represented himself in his request to modify Decision #3710 to increase the footprint, additional seasonal outdoor seating & signage that would exceed that allowed by the bylaw. Anderson directed the petitioner to seek review of the proposed signage by the Design Review Board. Perkins agreed not to pursue the requested relief for signage until DRB has advised them. Rob Bramhall, architect, gave an overview of the changes: push building back & place it perpendicular to Rt. 28, moved parking to side of building, increased the width of the building by 9', ice cream window off rear, moved tables from porches to patio, put seasonal

merchandise on porches. The current proposed footprint is for 3758 sq. ft., while only 3500 sq. ft. was approved in Decision No. 3710. They are in process with the Planning Board for a Site Plan Review. They wish to increase the number of seats from 16 to 24-28. The Board also discussed parking, on site circulation, indoor seating. Anderson suggested leaving the hearing open until the Planning Board issues their decision and continuing the ZBA hearing to March. Brown suggested continuing to the 2/21/08 ZBA meeting. Anderson asked the Petitioner to give the latest set of plans to the ZBA if anything changes through Site Plan Review process. If there are changes, Petitioner would need to come back to the ZBA. The Board voted unanimously to continue the hearing to 2/21/08 at 6 p.m. Ranalli will sit off the case.

PETITION NO. 3761

PETITIONER: Blatman

PREMISES AFFECTED: 4 Norwich Place

MEMBERS: Anderson, McDonough, Jeton, Bevacqua, Brown

Bevacqua made a motion to re-open deliberation to reconsider the previous vote of 3-2 to overturn the Building Inspector's decision to deny a building permit for a pool. Brown seconded the motion & the Board voted (5-0) to re-open deliberation. Anderson asked if anyone wanted to reconsider their vote. Jeton asked for Anderson's reason for voting. Anderson explained that section 4.2.4 states, in part, that pools can be in rear or side yard, but the question is where is it at 4 Norwich & to which lot line is the setback measured. He feels it means a 10' setback if in the rear yard, or a 30' setback if in the side yard. 4 Norwich's pool is in the rear yard, therefore the 10' setback applies to any property line of the rear yard. Jeton stated that she would change her vote. Anderson asked for a motion to reconsider the 3-2 vote that denied overturning the Building Inspector. Bevacqua made a motion to reconsider the 3-2 vote that denied overturning the Building Inspector. Jeton seconded the motion & the Board voted (5-0) to reconsider the vote that denied overturning the Building Inspector. Bevacqua made a motion to overturn the Building Inspector's decision to deny a building permit. Brown seconded the motion & the Board voted (4-1, McDonough opposed) to overturn the Building Inspector's decision. Bevacqua will write the decision.

PETITION NO. 3740

PETITIONER: Northfield Commons

PREMISES AFFECTED: 5 + 7 Webster Street, 69 North Street

MEMBERS: Anderson, McDonough, Jeton, Bevacqua, Brown

This is a continued public hearing. Attorney John Smolak gave a brief overview of the changes since the last meeting on 11/15/07, which included changes to the site plan, design & traffic study.

Chris Huntress, landscape architect, gave a PowerPoint presentation of the changes which include: reduction from 88 to 80 units, only duplex units facing North & Webster Streets, additional landscaping along street fronts & rear lot line, front doors at street with garage at rear, added fencing & buffer plantings along rear lot line by garden-unit buildings, garden-unit buildings increased from 2/5 to 3 stories.

Jason Adams, of McMahon Associates, summarized the supplemental traffic impact study. The new information included: focus on 4 intersections (North St & River Rd, Webster St., Somerset Dr., Greenwood Rd/Mt. Vernon, December/January counts with school in session – counts were lower than the June 2007 counts previously reported, grew to 2012 build out (including Campanelli Drive development), compared trip generation to industry standard & actual counts at Somerset Dr = higher, accident history reviewed with Mass Highway & APD = no accidents at North /Webster, or North /Somerset), level of service would go from B to C at Somerset Dr., overall no noticeable impact from the proposed project. Several residents had questions regarding the traffic & accidents, setbacks of buildings, sidewalk installation, landscaping, snow removal, buffering, club house use, site distance at project driveway, developers' profit, impact/safety on gun club & new residents, and moving single family units to North Street.

Anderson asked for a detailed list of waivers for the current plan & a sketch of what can be done with the single family & duplex units if the front setback was met. At the next meeting, the peer review consultant will give their report. Anderson also asked the Petitioners to consider if more trees could be placed on the streetscape, further discussions with gun club, if it's possible to decrease the density and if there is a pro forma analysis, it should be discussed next time. Anderson asked for the Board's concerns. Brown commented on the design affects of height & massing (tall roofs), suggesting a decrease in the building scale to be more in keeping with the structures. He also suggested varying the building types & voiced concern over the setback from the street. McDonough voiced concern over density, while Ranalli is concerned about traffic.

Brown asked for revised plans due to the changes presented tonight. McDonough made a motion to continue the hearing to 3/6/08. The Board voted unanimously to continue the hearing to the next regular meeting on 3/6/08. The neighbors' traffic peer review will be presented on 3/6/08 & will be submitted by Paul Hajec, traffic consultant for neighbors.

The meeting adjourned at 11:05 p.m.